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**United States District Court
Central District of California**

11 IT'S MY SEAT, INC., et al.,

12 Plaintiffs,

13 v.

14 HARTFORD CAPITAL LLC, et al.,

15 Defendants.
16

Case № 2:22-cv-02192-ODW (AFMx)

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS [18]; AND DENYING
MOTION TO DISMISS [31]**

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I. INTRODUCTION

19 Plaintiffs It's My Seat, Inc. and Vahe Shahinian (together, "Plaintiffs") have
20 twice initiated litigation in state court based on the same fraud and breach of contract
21 allegations. The first case Plaintiffs filed was removed to this Court, *It's My Seat, Inc.*
22 *v. Hartford Capital, LLC*, No. 2:20-cv-06378-ODW (AFMx) (C.D. Cal. filed July 17,
23 2020) (hereinafter, "*It's My Seat I*"), and the Court eventually dismissed all but one
24 defendant due to Plaintiffs' failure to serve them. After the deadline to add parties
25 expired in that case, Plaintiffs filed this second, nearly identical, action in state court
26 and named most of the dismissed defendants. (See Notice of Removal ("NOR") Ex. 1
27 ("Compl.") ¶ 12, ECF No. 1.) Thereafter, this second action was also removed to this
28 Court, *It's My Seat, Inc. v. Hartford Capital, LLC*, No. 2:22-cv-2192-ODW (AFMx)
("It's My Seat II"). (See NOR.) Two motions to dismiss are now pending in this

1 action. (Hartford Mot. Dismiss (“Hartford Mot.”), ECF No. 18; EIN Mot. Dismiss
 2 (“EIN Mot.”), ECF No. 31.) For the reasons that follow, the Court **GRANTS IN**
 3 **PART** and **DENIES IN PART** Defendant Hartford Capital LLC’s motion to dismiss,
 4 and **DENIES** the EIN Defendants’¹ motion to dismiss.²

5 II. BACKGROUND

6 Shahinian owns It’s My Seat, Inc., a ticket sales agency that also produces and
 7 promotes events. (Compl. ¶ 22.) It’s My Seat’s business model requires the company
 8 to front the costs of services for these events. (*Id.*) Plaintiffs allege that, in
 9 January 2019, Defendant Brian Stein contacted It’s My Seat in his role as “managing
 10 partner” of Defendant Hartford Capital and offered It’s My Seat a \$750,000 line of
 11 credit (“Term Loan”) if It’s My Seat also took a Merchant Cash Advance of \$250,000
 12 (“Bridge Loan”), to be funded by Defendant EIN. (*Id.* ¶ 26.) Plaintiffs allege that
 13 Stein offered the Bridge Loan at a high interest rate of 15%, but promised the Bridge
 14 Loan would transition to the Term Loan after thirty days, with a lower interest rate of
 15 8.89%. (*Id.*) It’s My Seat would have to make daily payments on the Bridge Loan
 16 and could not take loans from third parties. (*Id.*) It’s My Seat accepted the loans. (*Id.*
 17 ¶ 27.) Plaintiffs allege that, on January 10, 2019, EIN funded the Bridge Loan, but
 18 then never transitioned the Bridge Loan into the Term Loan. (*Id.* ¶¶ 30, 35–36.)
 19 Plaintiffs assert that “Defendants,” and Stein in particular, strung them along for more
 20 than two months with promises of funding the Term Loan, while extracting daily
 21 high-interest payments with no intention to deliver on the Term Loan. (*Id.* ¶¶ 35–38.)

22 A. First Action: *It’s My Seat I*

23 On October 28, 2019, Plaintiffs filed *It’s My Seat I* in state court against
 24 Hartford Capital, Stein, Craig Walters, Kevin Woodley, EIN, Craig Leszczak,³ Russell
 25

26 ¹ The “EIN Defendants” are EIN Cap, Inc., Kevin Woodley, Russell Naftali, and Gene Slavin.

27 ² Having carefully considered the papers filed in connection with the Motions, the Court deemed the
 matters appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

28 ³ Filings in *It’s My Seat I* indicate that Walters and Leszczak are the same individual. *See* Min.
 Order 2, *It’s My Seat I*, ECF No. 17.

1 Naftali, and Gene Slavin. Compl. ¶¶ 3–10, *It's My Seat I*, ECF No. 1-1. Plaintiffs
 2 asserted claims for (1) breach of contract, (2) breach of implied covenant of good faith
 3 and fair dealing, (3) promissory estoppel, (4) fraud, (5) intentional misrepresentation,
 4 (6) negligent misrepresentation, and (7) violation of the California Consumer Legal
 5 Remedies Act (“CLRA”). *Id.* ¶¶ 42–95. Eight months later, in June 2020, Plaintiffs
 6 served Stein, who removed the action to federal court. Notice of Removal ¶¶ 1–2, *It's*
 7 *My Seat I*, ECF No. 1. On November 30, 2020, after Plaintiffs twice failed to
 8 adequately show cause for their failure to serve the defendants, the Court dismissed
 9 without prejudice all defendants except Stein. Min. Order, *It's My Seat I*, ECF
 10 No. 23.

11 The Court set a case management schedule, including a November 15, 2021
 12 deadline for hearing motions to add parties; a May 16, 2022 discovery cutoff; and an
 13 August 19, 2022 bench trial. Scheduling & Case Management Order 21, *It's My*
 14 *Seat I*, ECF No. 32. In February 2022, Plaintiffs retained new counsel who asked
 15 Stein for a continuance. *See* Joint Stip. to Continue, *It's My Seat I*, ECF No. 45. Stein
 16 agreed on the condition that any deadlines that had already lapsed—i.e., the deadline
 17 to amend or add parties—would *not* be continued, and that Plaintiffs would not seek
 18 to add the dismissed defendants back into the litigation. *See id.* ¶ 23. On March 15,
 19 2022, Plaintiffs and Stein executed a stipulation expressly premised on these
 20 conditions and, on March 18, 2022, the Court granted the stipulated continuance,
 21 setting a new trial date for February 17, 2023. Order Granting Stip., *It's My Seat I*,
 22 ECF No. 46.

23 **B. This Action: *It's My Seat II***

24 Unbeknownst to Stein or Stein's counsel, two weeks before the parties
 25 stipulated to the continuance in *It's My Seat I*, on March 4, 2022, Plaintiffs filed this
 26 second action in state court and named most of the defendants dismissed in *It's My*
 27 *Seat I*. (*See* Compl.) In this second action, Plaintiffs again name as Defendants
 28 Hartford, Woodley, EIN, Naftali, and Slavin, but do not name Stein, Walters, or

Leszczak. (*Id.*) Plaintiffs assert the same claims for (3) promissory estoppel, (4) fraud, and (5) intentional and (6) negligent misrepresentation as those in *It's My Seat I*, but replace the breach of contract, breach of the implied covenant, and CLRA claims with claims for (1) violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), (2) RICO conspiracy, and (7) unfair competition. (*See id.* ¶¶ 42–94.) EIN removed the action and it was transferred to this Court as it is related to *It's My Seat I*. (*See* NOR.) Hartford and the EIN Defendants now separately move to dismiss Plaintiffs' claims.⁴ (*See* Hartford Mot.; EIN Mot.)

III. DISCUSSION

The Court finds that dismissal of this action, *It's My Seat II*, is warranted under Federal Rule of Civil Procedure ("Rule") 41(b), the Court's inherent authority, and due to Plaintiffs' improper attempt to split their claims.

A. Rule 41(b)

"The Court has the inherent power to achieve the orderly and expeditious disposition of cases by dismissing actions pursuant to [Rule] 41(b) for failure . . . to comply with court orders." *Rollins v. Superior Ct.*, 706 F. Supp. 2d 1008, 1013 (C.D. Cal. 2010) (first citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629–30 (1962); and then citing *Pagtalunan v. Galaza*, 291 F.3d 639, 640 (9th Cir. 2002)); *see also* *Chambers v. NASCO, Inc.*, 501 U.S. 32, 47 (1991) (discussing that courts possess inherent authority to manage their own proceedings and control the conduct of those appearing before them). In determining whether to dismiss a claim for failure to

⁴ Hartford and Plaintiffs request and oppose judicial notice in connection with Hartford's Motion. (*See* Hartford Req. Judicial Notice ("RJN"), ECF No. 19; Pls. RJN, ECF No. 29-1; Pls. Obj. Hartford RJN, ECF No. 29-2; Hartford Suppl. RJN, ECF No. 41; Hartford Opp'n Pls. RJN, ECF No. 42.) The Court takes judicial notice of undisputed adjudicative facts in court filings in *It's My Seat I*. *See U.S. ex rel Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (stating that the court "may take notice of proceedings [and related filings], both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue"). However, the Court does not judicially notice disputed facts contained therein, *Lee v. City of Los Angeles* 250 F.3d 668, 689 (9th Cir. 2001), or Plaintiffs' proffered SEC Complaint filed in Illinois, which is immaterial to this disposition.

1 comply with a court order, the Court must weigh several factors: “(1) the public’s
2 interest in expeditious resolution of litigation; (2) the court’s need to manage its
3 docket; (3) the risk of prejudice to defendants/respondents; (4) the availability of less
4 drastic alternatives; and (5) the public policy favoring disposition of cases on their
5 merits.” *Pagtalunan*, 291 F.3d at 642. A court is not required to consider these
6 factors explicitly, *see Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986), and
7 they are “not a series of conditions precedent before the judge can do anything, but a
8 way for a district judge to think about what to do,” *In re Phenylpropanolamine (PPA)*
9 *Prods. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (internal quotation marks
10 omitted).

11 Hartford argues that Plaintiffs’ “misconduct” and “sharp,” “sleazy tactics”
12 warrant dismissal under Rule 41(b) and the Court’s inherent authority. (Hartford
13 Mot. 32.) Hartford contends Plaintiffs’ conduct is “tantamount to violation of a court
14 order,” (*id.* at 34), because Plaintiffs commenced *It’s My Seat II* in state court
15 “without seeking leave of this Court,” and then “bamboozled Stein’s counsel (and this
16 Court) into an order for trial continuance, based on [P]laintiffs’ promise not to attempt
17 to amend the complaint or name additional defendants,” (*id.* at 32). Plaintiffs respond
18 that they “have not violated any court order.” (Opp’n Hartford Mot. 24, ECF No. 29.)
19 They argue that, in *It’s My Seat I*, the Court dismissed unserved defendants without
20 prejudice, so Plaintiffs were not barred from refileing the same claims against those
21 defendants. (*Id.*) Plaintiffs also assert they have not violated the stipulation to
22 continue in *It’s My Seat I*, as they only agreed they would not amend the pleadings or
23 add new parties *in that case*, which they have not done. (*Id.*)

24 Plaintiffs’ protestations aside, they misled Defendant Stein’s counsel, Mr.
25 Goldberg, and this Court, when they obtained the stipulation and continuance in *It’s*
26 *My Seat I* under false pretenses. Plaintiffs’ counsel had already filed *It’s My Seat II*
27 against the dismissed defendants in state court when they represented to Mr. Goldberg
28 that they would not seek to add the dismissed defendants back into the litigation.

1 Although, technically, Plaintiffs did not affirmatively violate an obligation in the
 2 stipulation, Plaintiffs' counsel omitted from the negotiation and stipulation the
 3 material fact that they had already filed the second action. That material omission
 4 misled Mr. Goldberg—and the Court—regarding the intended nature of *It's My Seat I*
 5 by implying that Plaintiffs planned to pursue their claims against only Stein. This was
 6 untrue. Plaintiffs' argument that they cannot be held responsible for Mr. Goldberg's
 7 misunderstanding of Plaintiffs' promise is simply duplicitous.

8 Furthermore, Plaintiffs' material omissions when obtaining the continuance,
 9 and their strategic circumvention of Court orders concerning the timely addition of
 10 proper parties, demonstrate bad faith. A court may infer bad faith based on an
 11 attorney's experience. *Huettig & Schromm, Inc. v. Landscape Contractors Council of*
 12 *N. Cal.*, 790 F.2d 1421, 1427 (9th Cir. 1986). Plaintiffs' three attorneys collectively
 13 have decades of experience practicing law. Attorney Kassabian has been in practice
 14 for fourteen years, nine of which he spent at a large internationally renowned law firm
 15 before opening his own practice. Decl. Raffi Kassabian ¶¶ 2–4, *It's My Seat I*, ECF
 16 No. 52-1. California State Bar records establish that Attorneys Demirjian and
 17 Bezdikian have been practicing for thirteen years and nineteen years, respectively.
 18 See Decl. Kris Demirjian ¶ 1, *It's My Seat I*, ECF No. 52-2 (SBN 252767); Decl.
 19 Sareen Bezdikian ¶ 1, *It's My Seat I*, ECF No. 52-3 (SBN 229165). Given this level of
 20 experience, “a strong inference arises that” they intentionally concealed their filing of
 21 *It's My Seat II* and offered misleading promises to obtain an otherwise unlikely
 22 continuance in *It's My Seat I*. See *Huettig*, 790 F.2d at 1427. The Court finds it
 23 “beyond belief that counsel could have believed in good faith” that filing a nearly
 24 identical second case against defendants this Court had dismissed in Plaintiffs' first
 25 case, in a different court and after the time had expired to add parties in the first case
 26 here, somehow did not circumvent this Court's orders and the administration of
 27 justice. See *id.* Plaintiffs intentionally evaded this Court's orders and authority; this
 28 conduct supports dismissal under Rule 41.

Further, dismissing this action and requiring Plaintiffs to proceed in *It's My Seat I* will also serve the Rule 41(b) factors by consolidating the claims, evidence, and parties at issue in a single legal action. *See Pagtalunan*, 291 F.3d at 642. Requiring Plaintiffs to proceed in a single litigation will expedite a unified resolution of the intertwined legal issues, streamline the Court's management of its docket, and eliminate the risk to defendants of potentially inconsistent judgments. And as dismissal is without prejudice, it is less drastic than dismissal with prejudice.

The Court finds it difficult to believe that attorneys of Plaintiffs' counsel's collective experience could somehow be ignorant of their abuse of the Federal Rules, their circumvention of this Court's orders, and their material omissions. Accordingly, pursuant to Rule 41(b) and the Court's inherent authority, the Court dismisses this action without prejudice.

B. Claim-Splitting

Alternatively, the Court dismisses this action because Plaintiffs have improperly split their claims by filing a second, duplicative action. A "district court may exercise its discretion to dismiss a duplicative later-filed action." *Adams v. Cal. Dep't of Health Servs.*, 487 F.3d 684, 688 (9th Cir. 2007), *overruled on other grounds by Taylor v. Sturgell*, 553 U.S. 880 (2008). In *Adams*, the Ninth Circuit explained that "[p]laintiffs generally have 'no right to maintain two separate actions involving the same subject matter at the same time in the same court and against the same defendant.'" *Id.* (quoting *Walton v. Eaton Corp.*, 563 F.2d 66, 70 (3d Cir. 1977)). "Dismissal of the duplicative lawsuit, more so than the issuance of a stay or the enjoinder of proceedings, promotes judicial economy and the comprehensive disposition of litigation." *Id.* at 692 (internal quotation marks omitted).

Borrowing from the test for claim preclusion, the Ninth Circuit assesses "whether the second action is duplicative of the first" by "examin[ing] whether the causes of action and relief sought, as well as the parties or privies to the action, are the same." *Id.* at 688–89. In determining whether the causes of action are the same, the

1 most significant consideration is whether the “two suits arise out of the same
2 transaction nucleus of facts.” *See id.* (quoting *Costantini v. Trans World Airlines*,
3 681 F.2d 1199, 1202 (9th Cir. 1982)).

4 Plaintiffs assert weakly that *It’s My Seat II* is not *exactly* duplicative of *It’s My*
5 *Seat I* because they do not name *all* the dismissed defendants again and have asserted
6 a RICO claim instead of a claim for breach of contract. (Opp’n Hartford Mot. 23
7 (incorporating by reference the arguments made in opposing Defendant Stein’s motion
8 for sanctions in *It’s My Seat I*)); Opp’n Stein Mot. Sanctions 9, *It’s My Seat I*, ECF
9 No. 52. But Plaintiffs cannot deny that the two actions arise out of the exact same
10 transactional nucleus of facts and will require presentation of substantially the same
11 evidence. The rights and interests at issue in *It’s My Seat I* are the same as those in
12 *It’s My Seat II*, as they stem from the same alleged misrepresentations and
13 relationships among the parties. Accordingly, the Court finds it appropriate to dismiss
14 *It’s My Seat II* without prejudice and require Plaintiffs to proceed only in *It’s My*
15 *Seat I*. *See Adams*, 487 F.3d at 692 (finding that where claim splitting exists, district
16 courts have discretion to dismiss the “later-filed complaint [with or] without
17 prejudice”).

18 The Local and Federal Rules provide procedures to obtain the relief Plaintiffs
19 sought here: the late addition of claims or parties to a litigation. These procedures
20 include moving to modify the scheduling order to permit a belated motion to amend
21 pleadings. *See Fed. R. Civ. P.* 15, 16. Although the Court makes no assessment
22 concerning Plaintiffs’ likelihood of success on such a motion, it notes that the Local
23 and Federal Rules are designed to impose the appropriate burdens and legal standards
24 on the parties according to the relief they seek. Had Plaintiffs complied with these
25 rules instead of circumventing the Court’s orders and filing an improper duplicative
26 action, Plaintiffs may have avoided creating the present procedural quagmire.

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1 **IV. CONCLUSION**

2 For the reasons discussed above, the Court **GRANTS IN PART and DENIES**
3 **IN PART** Hartford's Motion to Dismiss. (ECF No. 18.) Specifically, the Court
4 **DISMISSES** Plaintiffs' Complaint pursuant to Rule 41(b), the Court's inherent
5 authority, and for improper claim splitting, and **DENIES AS MOOT** Hartford's
6 remaining arguments for dismissal. The Court **DENIES AS MOOT** the EIN
7 Defendants' Motion to Dismiss. (ECF No. 31.) All dates and deadlines are
8 **VACATED**. The Clerk of the Court shall close this case.

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10 **IT IS SO ORDERED.**

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12 August 17, 2022

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16 **OTIS D. WRIGHT, II**
17 **UNITED STATES DISTRICT JUDGE**
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